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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

JOHN HENRY SCHNEIDER,

Debtor.

Case No. 14-61357

**TRUSTEE'S OBJECTION TO MERIDIAN'S REQUEST FOR JUDICIAL
NOTICE**

Trustee Joseph V. Womack, through counsel, objects to *Meridian's Request for Judicial Notice* (Doc. 247).

On April 13, 2016, this Court granted the request for judicial notice with the clarifying language that "to the extent permitted under the Federal Rules of Evidence, the Court takes judicial notice of those items identified in the Request."

Id., Doc. 248. Thus, the Court has already limited judicial notice to the extent allowed by the Federal Rules of Evidence.

Out of an abundance of caution, and to avoid any argument of waiver, the Trustee hereby states his objections to the request for judicial notice for the record.

Items 1-2 and 4-9 of the request for judicial notice are documents filed with the bankruptcy court in this case or related adversaries. In its request, Meridian acknowledges that, “[w]hile the Court cannot accept the veracity of the representations made in the documents, it may properly take judicial notice of the existence of those documents and of the representations having been made therein.” Meridian Request, p. 3. Thus, the Trustee does not object to judicial notice for the fact that the subject documents were filed. However, the Trustee does object to the extent that judicial notice is requested to determine the veracity of any representations or facts contained in those filed documents.

Item 3 requests the Court to take judicial notice of a letter from the Office of the Montana State Auditor, Commissioner of Securities and Insurance. It is not proper to take judicial notice of this letter for any reason. Rule 201(a), F.R.Evid., allows judicial notice “of an adjudicative fact only.” Here, there is no scenario under which the subject letter can be considered an adjudicated fact and the letter is clearly hearsay under the Federal Rules of Evidence. As noted by Judge Russell:

FRE 201 governs only judicial notice of adjudicative facts. “Adjudicative facts usually answer questions of who did what, where, when, how, why with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case.” Advisory Committee’s Note citing 2 Administrative Law Treatise 353. . . . The Advisory

Committee Note makes clear that extreme caution should be used in taking judicial notice of adjudicative facts because of the traditional belief that the taking of evidence, subject to established safeguards, is the best way to resolve controversies involving disputes of facts.

Bankruptcy Evidence Manual, West's Bankruptcy Series, Volume 2, 2012-2013 edition, § 201:2 "Facts Subject to Judicial Notice".

Applied here, Meridian attempts to use or apply judicial notice to adjudicative facts which are: 1) not known generally within the territorial jurisdiction of the trial court; and 2) are not capable of accurate and ready determination. In so doing, it seeks to bypass the traditional safeguards for admissibility of evidence.

DATED this 20th day of April, 2016.

GOETZ, BALDWIN & GEDDES, P.C.

By: /s/Trent M. Gardner

Trent M. Gardner/Jeffrey J. Tierney
Attorneys for Trustee Joseph V. Womack

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that on April 20, 2016, a copy of the foregoing pleading was served (i) by electronic means pursuant to LBR 9013-1(d)(2) on the parties noted in the Court's ECF transmission facilities and/or (ii) by mail on the following parties: None.

/s/Trent M. Gardner

Trent M. Gardner
Attorneys for Trustee Joseph V.
Womack